

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Gerardo Garza,	)	CIVIL ACTION NO. 9:16-1564-RBH-BM
	)	
Petitioner,	)	
	)	
v.	)	<b>REPORT AND RECOMMENDATION</b>
	)	
Warden, FCI Bennettsville,	)	
	)	
Respondent.	)	
	)	

This action has been filed by the Petitioner, pro se, as a writ of mandamus. Petitioner, who at the time he filed this case was an inmate at the Bennettsville Correctional Institution, alleges claims relating to his release from incarceration.

By Order dated May 24, 2016, Petitioner was given an opportunity to provide the necessary information and paperwork to bring the case into proper form for evaluation and possible service of process. Petitioner was warned that failure to provide the necessary information within the timetable set forth in the Order would subject the case to dismissal. However, the time to bring this case into proper form has now lapsed, and Petitioner has failed to provide a response to the proper form order or to contact the Court in any way.

Based on the foregoing, it is recommended that this action be **dismissed, without prejudice**, in accordance with Rule 41(b), Fed.R.Civ.P. See Link v. Wabash R.R. Co., 370 U.S. 626 (1962); Ballard v. Carlson, 882 F.2d 93, 95-96 (4<sup>th</sup> Cir. 1989), cert. denied sub nom, Ballard v. Volunteers of America, 493 U.S. 1084 (1990) [holding that district court's dismissal following an explicit and reasonable warning was not an abuse of discretion].



The parties are also referred to the Notice Page attached hereto.



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Bristow Marchant  
United States Magistrate Judge

June 24, 2016  
Charleston, South Carolina



### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
Post Office Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

